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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/679,119	10/04/2000	Roger P. Hoffman	P/2-75 CIP	7289
7590 11/29/2005			EXAMINER	
PHILIP M. WEISS, ESQ. WEISS & WEISS 310 OLD COUNTRY ROAD, SUITE 201 Garden City, NY 11530			OUELLETTE, JONATHAN P	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/679,119

Applicant(s)

HOFFMAN, ROGER P.

Examiner

Jonathan Ouellette

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-14,16-46,48-58 and 60-71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-14,16-46,48-58 and 60-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

1. Claims 2, 15, 47, 59, and 72-79 have been cancelled; therefore, **Claims 1, 3-14, 16-46, 48-58, and 60-71** are currently pending in application 09/679,119.

### *Claim Rejections - 35 USC § 112*

2. The rejection of Claims 1-14, 16-46, and 48-71 under 35 U.S.C. 112, second paragraph, is withdrawn due to applicant's amendments and arguments.

### *Claim Rejections - 35 USC § 101*

3. The rejection of Claims 1-14, 16-46, 48-71 under 35 U.S.C. 101, is withdrawn due to applicant's amendments.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1, 3-14, 16-46, 48-51, and 58** are rejected under 35 U.S.C. 102(b) as being anticipated by Hogge (US 5,280,425).

6. As per **Claims 1, 21, 33, and 34**, Hogge discloses a method of [apparatus for, computer usable medium for] controlling the operating speed of a manufacturing facility (Fig.1; Fig.3; C2-C4, operating speed synonymous with facility production plan/fulfillment) comprising the steps of: determining a current operating speed of said manufacturing facility (C2-C5, default production, maximum production, or zero); determining a desired operating speed, the desired operating speed dependent on at least one economic variable that varies depending on the operating speed (C2-C5, Complete model for optimized production, based on machine parameters and desired cost ratio); comparing said current operating speed to said desired operating speed; adjusting said current operating speed in response to said determination (C5-C7, displaying/implementing solution production settings – slow down by implementing partial lots for example, to reduce inventory or over producing; C2-C5, speed up by maximizing production to meet customer demand).
7. As per **Claims 3 and 35**, Hogge discloses determining said at least one economic variable is at least one of: a cost of manufacturing, at least one manufacturing inflow, and at least one manufacturing outflow.
8. As per **Claims 4, 22, and 36**, Hogge discloses calculating the cost of manufacturing, the manufacturing inflow, and the manufacturing outflow at a plurality of potential speeds, and selecting the desired operating speed from the potential operating speeds.
9. As per **Claims 5, 24, and 37**, Hogge discloses calculating a marginal cost of manufacturing, a marginal manufacturing inflow, and a marginal manufacturing outflow at a plurality of marginal potential operating speeds and selecting the desired speed from the marginal potential operating speeds and a prior desired operating speed.

10. As per Claims 6, 25, and 38, Hogge discloses wherein the economic variable is cost of manufacturing, and the cost of manufacturing includes ascertaining the correlation between operating speed and the cost of manufacturing.
11. As per Claims 7, 26, and 39, Hogge discloses determining said cost of manufacturing by ascertaining a correlation between operating speed and at least one of the following: the per-unit cost of manufacturing inflows and the usage of manufacturing inflows.
12. As per Claims 8 and 40, Hogge discloses wherein the correlation between manufacturing cost and operating speed is ascertained by estimating the correlation between manufacturing costs and operating speed of specific equipment or process in a manufacturing facility.
13. As per Claims 9, 10, 41, and 42, Hogge discloses wherein the correlation between manufacturing cost and operating speed for a machine is determined by including usage of manufacturing inflows associated with breaks; and wherein the correlation between manufacturing cost and operating speed for a machine is determined by including usage of manufacturing inflows associated with breaks.
14. As per Claims 11 and 43, Hogge discloses wherein the correlation between manufacturing cost and operating speed is ascertained by establishing the correlation between manufacturing costs and operating speed of groups of at least one of equipment and processes in a manufacturing facility.
15. As per Claims 12 and 44, Hogge discloses wherein the purchase price of manufacturing inflows is assigned, from lowest to highest per-unit cost, to increasing levels of manufacturing facility's production.

16. As per Claims 13, 27, and 45, Hogge discloses determining said manufacturing outflow by ascertaining a correlation between operating speed and sales of at least one of finished products and byproducts (meeting consumer demand).
17. As per Claims 14, 28, and 46, Hogge discloses wherein the correlation between the operating speed and sales is ascertained by assigning a plurality of manufacturing outflows to at least one specific portion of the manufacturing facility's production.
18. As per Claims 16, 29, and 48, Hogge discloses wherein the manufacturing outflow is determined, from highest to lowest per-unit economic value, for increasing levels of the manufacturing facility's production.
19. As per Claim 23, Hogge discloses wherein the means for determining a desired operating speed comprises calculating the cost of manufacturing, the manufacturing inflow, and the manufacturing outflow at a plurality of potential operating speeds and selecting the desired operating speed from the potential operating speeds.
20. As per **independent Claim 17, 30, and 49**, Hogge discloses a method of (apparatus for, computer usable medium for) determining the effect of one or more business transactions (custom demand) on the economic efficiency of the production of products in a manufacturing facility (excess inventory/cost control), wherein the economic efficiency is dependent on one or more economic variables that varies dependent on operating speed (Fig. 1; Fig.3; C2-C4, operating speed synonymous with facility production plan/fulfillment), comprised of: obtaining the current economic efficiency of the facility (C2-C5, default production, maximum production, or zero); inputting information on the business transaction that affects the economic variables (C2-C5, Complete model for

optimized production, based on machine parameters and desired cost ratio); computing the economic efficiency of the facility with the proposed transaction leaving the remaining variables constant; and displaying the information to an end-user (C5-C7, displaying/implementing solution production settings).

21. As per Claims 18, 31, and 50, Hogge discloses wherein the operating speed of the manufacturing facility is dependent on at least one economic variable the varies depending on the operating speed.
22. As per Claims 19, 32, and 51, Hogge discloses wherein the transactions include at least one of purchase of inflows, sales of outflows, capital additions, capital subtractions, and changes to equipment.
23. As per Claim 20, Hogge discloses wherein the business transactions are proposed business transactions.
24. As per Claim 58, Hogge discloses wherein said at least one economic factor is determined in real time.

***Claim Rejections - 35 USC § 103***

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**26. Claims 60-62, 64, 65, and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hogge in view of Official Notice.**

27. As per **independent Claim 60**, Hogge discloses a method of controlling the operating speed of a facility comprising the steps of: determining the desired operating speed; the desired operating speed dependent on at least one economic variable that varies depending on the operating speed (C2-C5, Complete model for optimized production, based on machine parameters and desired cost ratio); determining a current operating speed (C2-C5, default production, maximum production, or zero); said desired operating speed being different than said current operating speed; adjusting said operating speed based on said desired operating speed (C5-C7, displaying/implementing solution production settings).
28. Hogge fails to expressly disclose the use of the system/method with a papermaking facility.
29. However, Hogge does advise that the system could be used with a variety of facility/production environments (C7 L1-5); and Official Notice is give that papermaking facilities were well known facility/production environments to one of ordinary skill in the art at the time the invention was made.
30. As per Claim 62, Hogge discloses wherein the at least one economic variable is at least one of a *cost of manufacturing*, at least one manufacturing inflow, and at least one manufacturing outflow.

31. As per Claim 64, Hogge discloses wherein the economic variable is cost of manufacturing, and the costs of manufacturing includes ascertaining the correlation between operating speed and the cost of manufacturing.
32. As per Claim 65, Hogge discloses wherein the cost of manufacturing is determined by ascertaining a correlation between operating speed and at least one of the following: the per unit cost of manufacturing inflows and the usage of manufacturing inflows.
33. As per Claim 71, Hogge discloses wherein the summation of said cost of manufacturing are compared to available options for potential product sales net freight and other customer specific costs to compute possible contribution options; if said options are less than a minimum contribution that has been established, said operating speed is reduced.
34. As per **independent Claim 61**, Hogge discloses a facility operating speed controller comprising: means for determining a current operating speed of said facility (C2-C5, default production, maximum production, or zero); means for determining a desired operating speed; the desired operating speed dependent on at least one economic variable that varies depending on the operating speed (C2-C5, Complete model for optimized production, based on machine parameters and desired cost ratio); said desired operating speed being different than said current operating speed; means for comparing the current operating speed to the desired operating speed and adjusting the current speed in response to the comparison (C5-C7, displaying/implementing solution production settings).
35. Hogge fails to expressly disclose the use of the system/method with a papermaking facility.

36. However, Hogge does advise that the system could be used with a variety of facility/production environments (C7 L1-5); and Official Notice is give that papermaking facilities were well known facility/production environments to one of ordinary skill in the art at the time the invention was made.

**37. Claims 52-57 are rejected under 35 U.S.C. 103 as being unpatentable over Hogge.**

38. As per Claims 52-57, Hogge does not expressly show wherein said manufacturing facility is a process manufacturing facility.

39. However these differences are only found in the nonfunctional descriptive data and are not functionally involved in the steps recited. The operating speed controlling method/system would be performed regardless of the type of facility the method/system was used on. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

40. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the operating speed controlling method/system with a multitude of facility types, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

**41. Claims 63 and 66-70 are rejected under 35 U.S.C. 103 as being unpatentable over Hogge in view of Official Notice.**

42. As per Claims 63 and 66-70, Hogge does not expressly show the used of a multitude of equipment types, input/output types, and economic variables used in the system/method

43. However these differences are only found in the nonfunctional descriptive data and are not functionally involved in the steps recited. The operating speed controlling method/system would be performed regardless of the equipment types, input/output types, and economic variables used in the system/method. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).
44. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the operating speed controlling method/system with a multitude of equipment types, input/output types, and economic variables, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

### ***Response to Arguments***

45. Applicant's arguments filed 6/27/2005, with respect to Claims 1, 3-14, 16-46, 48-58, and 60-71, have been considered but are moot in view of the new ground(s) of rejection.

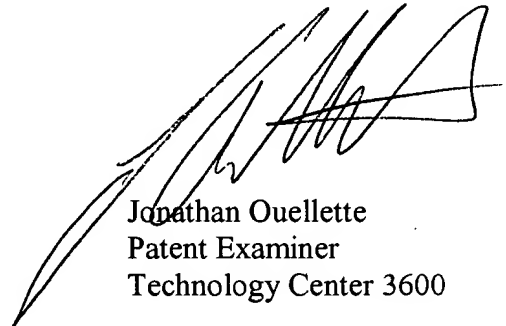
### ***Conclusion***

46. Additional Literature has been referenced on the attached PTO-892 form, and the Examiner suggests the applicant review these documents before submitting any amendments.
47. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Ouellette whose telephone number is (571) 272-

6807. The examiner can normally be reached on Monday through Thursday, 8am - 5:00pm.

48. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone numbers for the organization where this application or proceeding is assigned (571) 273-8300 for all official communications.
49. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Office of Initial Patent Examination whose telephone number is (703) 308-1202.

jo  
November 23, 2005



Jonathan Ouellette  
Patent Examiner  
Technology Center 3600